



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Mr. Arthur R. Bethke  
Concord Oil Company, Inc.  
147 Lowell Road  
P.O. Box 368  
Concord, MA 01742-0368

Re: Beard's Texaco  
455 Daniel Webster Highway  
Merrimack, NH 03054

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
NO. AF 2000-021**

**May 9, 2000**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to Concord Oil Company, Inc., pursuant to RSA 125-C and Env-C 601.05. The Division is proposing that fines totaling \$2,770 be imposed against Concord Oil Company, Inc. for the violations alleged below. This notice contains important procedural information. Please read the entire notice carefully.

**II. Parties**

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.
2. Concord Oil Company, Inc. ("Concord Oil") is a corporation having a mailing address of 147 Lowell Road, P.O. Box 368, Concord, MA 01742-0368.

**III. Summary of Facts and Law Supporting Claim(s)**

1. RSA 125-C:15, I-b authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C.
2. RSA 125-C:15, I-b establishes the schedule of fines for violations of RSA 125-C.
3. RSA 125-C:6 authorizes the Commissioner to exercise the general supervision of the administration and enforcement of RSA 125-C and all rules adopted and orders promulgated under it.

4. Pursuant to RSA 125-C:4 the Commissioner has adopted Env-A 1205 to establish the schedule of fines for violations of RSA 125-C, rules adopted under RSA 125-C, and permits issued under RSA 125-C.
5. Concord Oil is the owner of a gasoline station facility known as Beard's Texaco, located at 455 Daniel Webster Highway, Merrimack, NH 03054 ("Beard's Texaco").
6. Env-A 1205.05(a) requires the owner of a storage tank at a gasoline dispensing facility to install a CARB-certified stage I system.
7. Relative to Beard's Texaco, Division records indicate the following:
  - a. On October 26, 1998, a Letter of Deficiency ("LOD") was issued to Concord Oil indicating that the Beard's Texaco regular gasoline tank, super gasoline tank and diesel tank, which were manifolded together, did not constitute a CARB-certified stage I system. The LOD requested that the facility modify the stage I system by isolating the gasoline tanks from the diesel tank within 30 days of receipt of the letter.
  - b. An inspection of Beard's Texaco was performed on October 5, 1999, by Division staff (almost a year following the LOD issuance) and, from the observations made, it appeared that the diesel tank was still connected to the gasoline storage tanks through the vent manifold piping.
  - c. Information received in late November 1999, as the result of a Division telephone call to Concord Oil on November 16, 1999, confirmed that the diesel tank was still manifolded with the gasoline tanks.
  - d. Concord Oil contracted to have the diesel tank isolated from the gasoline tanks in early December 1999.
  - e. Division staff observed a test in December 1999, which confirmed that the diesel tank had, in fact, been isolated.
8. Operation of the gasoline tanks with manifolded connection to the diesel tank for the time period prior to October, 1998, through early December, 1999, has allowed for gasoline vapors to be vented to the atmosphere at all times since diesel tanks have an open vent.

9. In accordance with RSA 125-C:2 and RSA 125-C:15, I-b, the Division has classified the operation of the non-certified stage I system manifolded to a diesel tank for a period well in excess of one year to be a major deviation from a requirement causing a moderate potential for harm.

10. Env-A 1205.05(c) and Env-A 1205.05(d) require each vent pipe on an underground gasoline storage tank at a gasoline dispensing facility to be equipped with a pressure/vacuum (P/V) relief valve and require the relief valve settings to be 8 oz/square inch pressure and 0.5 ounces/square inch vacuum.

11. DES records indicate the following:

- a. No P/V vent caps were installed on any of the underground storage tanks until August 27, 1998;
- b. The P/V vent caps installed on August 27, 1998, had the incorrect pressure setting as shown in the table below:

	Beard's Texaco P/V vent cap settings:	Env-A 1205.05 required P/V vent cap settings:
Pressure	1 oz./square inch	8 oz./square inch
Vacuum	0.5 oz./square inch	0.5 oz./square inch

c. Numerous inspections were conducted at Beard's Texaco verifying the P/V vent cap deficiency (September 28, 1995; July 23, 1996; June 12, 1998; and October 5, 1999). In addition to the Division's policy of informing the facility after each inspection of any deficiency noted, the Division made additional contacts with Concord Oil indicating the deficiency (July 30, 1996, June 13, 1998, and August 14, 1998).

d. A Division telephone call to Concord Oil on November 16, 1999, verified that the incorrect P/V vent caps were still in place.

e. Concord Oil replaced the P/V vent caps in December 1999, with the proper vent caps as verified by Division inspection.

12. In accordance with RSA 125-C:2 and RSA 125-C:15, I-b, the Division has classified the failure to install the proper P/V vent caps as a minor deviation from a requirement causing minor potential for harm. The installation of incorrect P/V vent caps is considered by the Division as a minor deviation from the requirement since some of the gasoline vapors would have been

contained by the lower pressure setting P/V vent caps.

11. Env-A 1205.08(c) requires the owner of an underground tank to notify DES within 60 days of any change from gasoline to another product..
12. Division records indicate that Beard's Texaco was modified when the underground tank, which originally contained mid-grade gasoline, was modified to contain diesel fuel. To date, the Division has not received the required Station Notification Form for the fuel change.
13. In accordance with RSA 125-C:2 and RSA 125-C:15,I-b(b), the Division has classified the failure to notify the Division of the modification to the tank as a procedural violation and therefore a minor deviation from a requirement causing a minor potential for harm.
14. Env-A 1205.19(c) requires owners of tanks located in Hillsborough, Merrimack, Rockingham, or Strafford Counties that do not meeting the criteria for stage II and that do not have stage II installed to submit to the Division annual facility throughputs no later than April 1 of the following year.
15. A review of the records by the Division conducted in early November, 1999, showed that Concord Oil had not submitted to the Division the required annual throughput information for the years 1996, 1997, and 1998. Following a telephone conversation between Division personnel and Concord Oil, the required gasoline throughput records for 1996, 1997, and 1998 were received on November 16, 1999 indicating that gasoline throughput at Beard's Texaco had not exceeded the 420,000 gallons per year threshold for stage II applicability.
16. In accordance with RSA 125-C:2 and RSA 125-C:15, I-b, the Division has classified the failure to submit on a timely basis the annual gasoline throughput information as a procedural violation and therefore a minor deviation from a requirement causing a minor potential for harm.

#### **IV. Violations Alleged**

1. Concord Oil has violated Env-A 1205.05(a) by modifying Beard's Texaco by manifolding the diesel tank with the gasoline storage tanks such that the gasoline dispensing facility was not a CARB-certified stage I system.
2. Concord Oil has violated Env-A 1205.05(c) and Env-A 1205.05(d) by not installing a P/V vent cap for a significant period of time and then installing the incorrect P/V vent cap.
3. Concord Oil has violated Env-A 1205.08(c) by modifying the Beard's Texaco underground tank which originally contained mid-grade gasoline such that it would contain diesel

fuel and not sending the required notification of the fuel change.

4. Concord Oil has violated Env-A 1205.19(c) by not submitting to the Division the annual facility throughputs by April 1 of the following year for the years 1996, 1997, and 1998 for Beard's Texaco.

#### **V. Proposed Administrative Fines**

1. For the violation identified in IV. 1. above (non CARB-certified stage I facility), RSA 125-C:15, I-b specifies a fine range of between \$1,251 and \$1,750. The Division seeks a fine of \$1,750 based on the length of non-compliance and willfulness of the violation.

2. For the violation identified in IV.2. above (missing and improper P/V vent caps), RSA 125-C:15, I-b specifies a fine range of between \$100 and \$1,000. The Division seeks a fine of \$420 based on the length of non-compliance and willfulness of the violation.

3. For the violation identified in IV.3. above (no notification of change to a stage I system), RSA 125-C:15, I-b specifies a fine range of between \$100 and \$1,000. The Division seeks a fine of \$300 based on the length of non-compliance.

4. For the violation identified in IV.4. above (non-submission of gasoline throughput records), RSA 125-C:15, I-b specifies a fine range of between \$100 and \$1000. The Division seeks a fine of \$300 based on the length of non-compliance.

**The total fine being sought is \$2,770.**

#### **VI. Hearing, Required Response**

Concord Oil has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for Monday, July 17, 2000 at 9:00 a.m. in Room C-110 of the DES offices at 6 Hazen Drive in Concord, NH.

Pursuant to Env-C 601.06, Concord Oil is required to respond to this notice. Please respond no later than June 15, 2000 using the enclosed form as follows:

1. If Concord Oil plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.

2. If Concord Oil chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it with payment of the fine to

Mr. Ballentine.

3. If Concord Oil wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine and call Mr. Ballentine to indicate Concord Oil's interest in settling.

Concord Oil is not required to be represented by an attorney. If Concord Oil chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Concord Oil wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, Concord Oil must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If Concord Oil does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 202.08.

## **VII. Determination of Liability for Administrative Fines**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Concord Oil committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is more likely than not that the thing sought to be proved is true.

If the Division proves that Concord Oil committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be reduced by 10% for each of the circumstances listed below that Concord Oil proves, by a preponderance of the evidence, applies in this case:

1. The violation was a one-time or non-continuing violation, and Concord Oil did not know about the requirement when the violation occurred, and the violation has not continued or reoccurred as of the time of the hearing, and any environmental harm or threat of harm has been corrected, and Concord Oil did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Concord Oil was making a good faith effort to comply with the requirement that was violated.
3. Concord Oil has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to Concord Oil's case which was not known to the Division at the time the fine was proposed.


★★★★★ IMPORTANT NOTICE ★★★★★

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. The hearing is Concord Oil's opportunity to present testimony and evidence that Concord Oil did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If Concord Oil has any evidence, such as photographs, business records or other documents, that Concord Oil believes show that Concord Oil did not commit the violation(s) or that otherwise support Concord Oil's position, Concord Oil should bring the evidence to the hearing. Concord Oil may also bring witnesses (other people) to the hearing to testify on Concord Oil's behalf.

If Concord Oil wishes to have an informal meeting to discuss the issues, Concord Oil must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

★★★★★

Information regarding this proposed fine may be made available to the public via DES's Web page ([www.state.nh.us/des](http://www.state.nh.us/des)). If Concord Oil has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

  
Kenneth A. Colburn, Director  
Air Resources Division

Enclosure (NHDES Fact Sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator  
Susan Alexant, DES Hearings and Rules Attorney  
Town of Merrimack, Board of Selectmen  
J.R. Poisson, DES/ARD Vapor Recovery Control Coordinator